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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS D. BALTAZAR,

Defendant and Appellant.

D050137

(Super. Ct. No. SCE236907)

APPEAL from a judgment of the Superior Court of San Diego County, Louis R. Hanoian, Judge. Affirmed.

A jury convicted Luis D. Baltazar of second degree murder. (Pen. Code, § 187, subd. (a).)¹ The jury also found Baltazar committed the offense for the benefit of or in association with a criminal street gang (§ 186.22, subd. (b)(4)), and that he personally discharged a firearm proximately causing the victim's death (§ 12022.53, subd. (d)).

¹ All statutory references are to the Penal Code unless otherwise specified.

Baltazar admitted a prior strike conviction allegation (a juvenile adjudication for robbery), and the trial court sentenced him to prison for 55 years to life--15 years to life for second degree murder (§ 187, subd. (a)), doubled pursuant to the three strikes law (§ 667, subds. (b) - (i)), and 25 years to life for personally discharging a firearm proximately causing the victim's death (§ 12022.53, subd. (d)).

Baltazar appeals, contending that his sentence is invalid because the federal Constitution prohibits the trial court's reliance on Baltazar's prior juvenile adjudication as a prior strike conviction under the three strikes law.

On May 5, 2008, this court filed an opinion reversing the sentence in this case and remanding the matter to the trial court for resentencing. On July 16, 2008, the California Supreme Court granted a petition for review and on September 9, 2009, issued the following order: "The above entitled matter is transferred to the originating Court of Appeal with directions to vacate its decision and reconsider the cause in light of *People v. Nguyen* (2009) 46 Cal.4th 1007." In compliance with the order of the Supreme Court, the opinion of this court filed May 5, 2008, is vacated and we issue this new opinion.

I

FACTS²

After a party, Omar Gonzalez, who may have been affiliated with the Logan gang, apparently made a verbal challenge to members of the Market Street gang. Jose Luis Guadarama, a Market Street gang member, engaged in a brief fistfight with Gonzalez.

² Baltazar does not challenge his conviction. We only briefly set forth the facts of the offense, which, as the trial court noted, depict a "totally senseless trag[edy]."

Baltazar, also a Market Street gang member, apparently then pulled out a gun and shot Gonzalez in the head. Gonzalez died as a result of the gunshot wound.

II

DISCUSSION

Baltazar contends that the trial court violated his rights to a jury trial under the Sixth Amendment, as interpreted in the United States Supreme Court cases of *Cunningham v. California* (2007) 549 U.S. 270 [127 S.Ct. 856] (*Cunningham*) and *Apprendi v. New Jersey* (2000) 530 U.S. 466 by using his prior juvenile adjudication for the offense of robbery to increase his sentence under the three strikes law.

A. *Procedural History*

While the jury was deliberating, the trial court asked Baltazar's counsel how his client wished "to proceed with regard to the strike prior." Counsel stated he had reviewed the documentary evidence regarding "the strike prior from juvenile court," and because "it appear[s] as though it is a valid prior," the defense planned to "admit the prior." Counsel added, "I've had a chance to discuss it with [Baltazar], Your Honor, and I believe he's prepared to admit the prior strike." The trial court addressed Baltazar directly, asking him whether he "underst[ood] that in connection with the prior, it's alleged that you suffered a prior robbery [conviction], which is a strike under the California [three] strike[s] law." The court explained that if the jury convicted him, "the fact that you have suffered the prior strike . . . will double whatever sentence is the sentence that will be required in the case." Baltazar stated that he understood.

The court informed Baltazar he had "the right to have a jury make the determination as to whether or not you suffered that strike prior," and in that jury trial he would enjoy "the same rights" as in the trial just concluded, including "the right to remain silent"; "the right to present evidence on your own behalf, to subpoena witnesses at no cost to you"; "the right to confront and cross-examine witnesses, call witnesses and the whole nine yards." Baltazar again stated that he understood. The court then stated:

"Mr. Baltazar, do you admit or deny the allegation[] that[,] pursuant to Penal Code section[s] 667[, subdivisions](b) through (i), 1170.12 and 668, . . . you were previously adjudicated as a juvenile from the following serious or violent felonies under California law: that would be a robbery charge, for which the date of the adjudication is the 30th of September in 2002, in case No. JD7221, in the juvenile court of San Diego County?"

Baltazar stated that he "admit[ted]" the prior adjudication. The court then ruled: "I'm going [to] accept the admission" and "[f]ind that the defendant has given a knowing and intelligent waiver of his constitutional rights." The trial court added, "I've examined the file myself and there is a sufficient factual basis for the admission."

After the jury returned a guilty verdict, the trial court sentenced Baltazar to 55 years to life in prison: Fifteen years to life for the second degree murder conviction (§ 190, subd. (a)) doubled to 30 years to life because of the prior strike conviction (juvenile adjudication) under the three strikes law (§ 667, subd. (e)(1)), with an additional 25 years to life based on the firearm use enhancement (§ 12022.53, subd. (d)).

B. *Juvenile Adjudication as a Prior Strike Conviction Under the Three Strikes Law*

Baltazar contends the trial court's reliance on his prior juvenile adjudication for robbery to impose an enhanced sentence under the three strikes law violated his

constitutional right to a jury trial as set forth in *Cunningham, supra*, 127 S.Ct. 856, 860, and *Apprendi, supra*, 530 U.S. 466, 490. This issue was decided by the California Supreme Court in *People v. Nguyen, supra*, 46 Cal.4th 1007, which held that prior juvenile adjudications for offenses that are serious or violent felonies under the three strikes law and would be prior strike convictions if incurred by an adult may be used to impose a three strikes sentence on subsequent conviction of an adult of a felony. Under the compulsion of the California Supreme Court's decision in *People v. Nguyen, supra*, we reject Baltazar's contention and affirm the judgment.

DISPOSITION

The judgment is affirmed.

McDONALD, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.